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United Nations Decade of International Law: draft guiding principles for international negotiations

Draft guiding principles for international negotiations

Report of the Secretary-General

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I. Introduction

1. The present report has been prepared pursuant to paragraph 5 of General Assembly resolution 52/155 of 15 December 1997 entitled "Draft guiding principles for international negotiations", in which the Assembly requested the Secretary-General to transmit comments and proposals on the draft guiding principles for international negotiations contained in document A/52/141.

2. By a note verbale dated 6 February 1998, the Secretary-General drew the attention of all States to General Assembly resolution 52/155 and invited them to submit, pursuant to paragraph 4 of the resolution and by 1 August 1998, any comments and proposals which they might consider appropriate.

3. As at 3 August 1998, information in response to the above-mentioned note has been received from the Governments of Kyrgyzstan, the Libyan Arab Jamahiriya, Mongolia and Qatar.

II. Comments and proposals received from States

Kyrgyzstan

[Original: English]
[6 May 1998]

The Kyrgyz Republic welcomes the opportunity to consider the question of draft guiding principles for international negotiations in accordance with General Assembly resolution 52/155. In addition, the Kyrgyz Republic considers that international negotiations play an increasingly significant role in the management of international relations, that they are important and that they constitute the most widely used means for promoting bilateral and multilateral cooperation between States. It also expresses the belief that the development of principles for international negotiations is important for successful and predictable negotiations and is in full conformity with the objectives of the United Nations Decade of International Law. Furthermore, the Kyrgyz Republic looks forward to a businesslike and fruitful consideration of the issue and expresses the hope that these principles would be agreed upon and adopted by the General Assembly in 1999 during the year of celebration of the centennial of the first International Peace Conference of 1899.

Libyan Arab Jamahiriya

[Original: Arabic]
[10 June 1998]

1. We should like to state that the Socialist People's Libyan Arab Jamahiriya considers that the draft guiding principles for international negotiations accord with the general principles of international law and, in particular, with the Vienna Convention on the Law of Treaties and that they would safeguard the legitimate rights of small States in negotiations at both the bilateral and multilateral levels.

2. Accordingly, the Socialist People's Libyan Arab Jamahiriya supports the approval and adoption of the draft guiding principles, which would promote and further develop the norms of international law.

Mongolia

[Original: English]
[17 March 1998]

1. The position of the Government of Mongolia on the question of drafting guiding principles for international negotiations is reflected in document A/52/141. Mongolia believes that international negotiations are the most flexible and effective means of cooperation of States in managing international relations, settling disputes by peaceful means and creating international norms of conduct of States, the role of which will definitely increase in the future.

2. It is generally recognized and accepted that international negotiations are conducted on the basis of the principles of contemporary international law. The international community has underlined the important role that constructive and effective negotiations can play in attaining the purposes of the Charter of the United Nations by contributing to the management of international relations, the peaceful settlement of disputes and the creation of new international norms of conduct of States. However, lack of clear rules concerning the conduct of negotiations gives rise to or provides room for different interpretations of even such generally recognized principles as the sovereign equality of States, non-discrimination, non-interference, negotiation in good faith, cooperation of States, the non-use of force and so on. The consideration of the item in the Legal (Sixth) Committee[1] during the fifty-second session of the General Assembly of the United Nations has demonstrated that there is widespread support for identifying and harmonizing the set of principles to guide States in the conduct of international negotiations that would offer a frame of reference for negotiations and contribute to enhancing the predictability of negotiating parties, reduce uncertainty and promote an atmosphere of trust at negotiations.

3. The consideration of the item, including the content and the drafting of the principles, has been based on the draft principles presented by Mongolia (see A/52/141, annex II).

Though some delegates have proposed that the Mongolian draft be revised on the basis of comments and suggestions made during the consideration of the item in the Committee and its Working Group, Mongolia believes that such a revision should be made once written comments and proposals have been made available and discussed at the fifty-third session of the General Assembly. The consideration of the item during the last session has also shown the effectiveness of consideration of this item when examined without politicizing the issues.

4. During the consideration of the draft principles in the Legal (Sixth) Committee, two questions of principle had been raised that, it seems, need some clarification, namely (a) whether freedom of choice of means in the peaceful settlement of disputes would be affected by the adoption of these guiding principles for international negotiations; and (b) what is actually meant by the duty of States to adhere strictly to the agreed principles and rules of conducting given negotiations, reflected in draft principle (h) of the draft contained in annex II of document A/52/141.

5. Freedom of choice of means is one of the main principles of peaceful settlement of disputes, as reflected in the Charter of the United Nations, the Manila Declaration on the Peaceful Settlement of International Disputes[2] and other relevant international documents. Its utility is confirmed daily by international practice. However, peaceful settlement of disputes is not the only function of international negotiations. The application of international negotiations is much broader; they are the main tool of international cooperation, managing international relations and creating the new norms of conduct of States. Therefore, in the context of the guiding principles of international negotiations, the role of negotiations, as flexible and effective means of peaceful settlement of disputes, should be confined to the duty of States to negotiate meaningfully, in order to arrive at an early settlement acceptable to the parties.

6. The duty of States to adhere strictly to the agreed principles and rules of conducting given negotiations is an important principles that should be reflected in the body of guiding principles. Given the fact that each international negotiation has its specific goal and traits, this principle identifies them so as to enable the parties to be focused on them when negotiating. Thus, for example, in many disarmament negotiations the principle of equal and undiminished security at the lowest level of armaments is essential. At the negotiations on the Cyprus question, the main political aim, it seems, is to arrive at a settlement based on a single, bizonal, bicommunal Cyprus State. In the Madrid and Oslo negotiations on the Middle East settlement, the main political principle was peace for land. Moreover, the agreed principles and rules of given negotiations could set clearly the aim of negotiations, the framework for addressing the issues, the order of their consideration and so forth, in other words agreeing on the terms of negotiations without prejudging their outcome.

7. One of the questions to be addressed at the forthcoming discussion of the draft principles is sovereign equality of the parties to international negotiations on the one hand, and marked disparity of power of the parties to negotiations on the other. Though it is not a purely legal issue, nevertheless it has practical implications.

Qatar

[Original: Arabic]
[13 April 1998]

1. The concept of having recourse to force must be abandoned and efforts must be made to achieve the settlement of international disputes through negotiations. Such negotiations will not, however, be equitable unless the principle of the sovereign equality of all States is observed.

2. The conduct of international negotiations has not been as exhaustively studied and codified by educational and professional institutions as have other aspects of diplomatic relations. It is now clear that increased efforts must be made to identify guiding principles in a code of conduct.

3. States have a duty to negotiate in good faith. This does not mean that any party should abandon a legitimate demand, but only that it should not abandon negotiations without justification and that it should refrain from any action that might jeopardize a proposed agreement when it has entered into negotiations for the purpose of concluding an agreement.

4. The principles of international law and the provisions of the Charter of the United Nations must be fully observed during the course of negotiations.

5. States must not create obstacles to the conduct of negotiations by insisting on the imposition of irrelevant preconditions for the initiation or continuation of negotiations.

6. With regard to negotiations conducted between States and international organizations with a view to the provision of humanitarian assistance, such negotiations should not be prolonged unnecessarily and priority should be given to enabling the assistance to reach recipients with all possible speed.

Notes

[1] A/52/647 and A/C.6/52/SR.8-10, 30 and 31.

[2] General Assembly resolution 37/10, annex.